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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,895	01/09/2002	G. William Ragland	002004-299	3819

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EXAMINER

SAVAGE, JASON L

ART UNIT	PAPER NUMBER
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1775

DATE MAILED: 08/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n No.

10/044,895

Applicant(s)

RAGLAND, G. WILLIAM

Examiner

Jason L. Savage

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-26 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other:

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1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-8 and 12-15, drawn to an article, classified in class 428, subclass 594.
- II. Claims 9-11 and 16, drawn to an article, classified in class 428, subclass 614.
- III. Claims 17-22, drawn to a method, classified in class 72, subclass 379.2.
- IV. Claims 23-24, drawn to a method, classified in class 72, subclass 385.
- V. Claims 25-26, drawn to a method, classified in class 72, subclass 414.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the inventions are different in that the article of Group I has a bottom sheet and a top sheet which covers and seals the compartments in the bottom sheet whereas the article of Group II only has a single sheet with metal foil containers inserted into the openings in sheet.

3. Inventions I and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process such as by placing material at desired locations on a bottom sheet and placing a second layer on top of the first layer and compressing the two layers together to form a composite sheet having material contained in

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compartments between the sheets instead of the claimed method of forming compartments in a sheet, then filling the compartments with material and finally superposing a second layer over the first sheet and joining. While it is noted that claims 21-22 are process claims which incorporates the same limitations as the article due to their being dependent on the article claim 12, a product defined by the process by which it can be made is still a product claim (*In re Bridgeford*, 149 USPQ 55 (CCPA 1966)) and can be restricted from the process if the examiner can demonstrate that the product as claimed can be made by another materially different process such as the alternative process described above. See *In re Brown*, 173 U.S.P.Q 685, and *In re Fessmann*, 180 U.S.P.Q. 324, for analysis of weight given to process step recitations in product claims.

4. The inventions are distinct, each from the other because of the following reasons:

Inventions I and IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the inventions differ in that the article of Group I has a bottom sheet and a top sheet which covers and seals the compartments in the bottom sheet whereas the method of Group IV forms an article from a single sheet with metal foil containers inserted into the openings in sheet.

5. The inventions are distinct, each from the other because of the following reasons:

Inventions I and V are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the

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inventions different in that the article of Group I has a bottom sheet and a top sheet which covers and seals the compartments in the bottom sheet whereas the method of Group V forms an article from a single sheet with metal foil containers inserted into the openings in sheet.

6. Inventions III and IV are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process such as by forming the multicompartment sheet of unitized material without using corrugating or embossing steps on the sheet and the containers. While it is noted that claims 23-24 are process claims which incorporates the same limitations as the article due to their being dependent on the article claim 16, a product defined by the process by which it can be made is still a product claim ( *In re Bridgeford*, 149 USPQ 55 (CCPA 1966)) and can be restricted from the process if the examiner can demonstrate that the product as claimed can be made by another materially different process such as the alternative process described above. See *In re Brown*, 173 U.S.P.Q. 685, and *In re Fessmann*, 180 U.S.P.Q. 324, for analysis of weight given to process step recitations in product claims.

7. Inventions III and V are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be

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made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process such as by forming the multicompartment sheet of unitized material without using corrugating or embossing steps on the sheet and the containers. While it is noted that claims 25-26 are process claims which incorporates the same limitations as the article due to their being dependent on the article claim 16, a product defined by the process by which it can be made is still a product claim ( *In re Bridgeford*, 149 USPQ 55 (CCPA 1966)) and can be restricted from the process if the examiner can demonstrate that the product as claimed can be made by another materially different process such as the alternative process described above. See *In re Brown*, 173 U.S.P.Q 685, and *In re Fessmann*, 180 U.S.P.Q. 324, for analysis of weight given to process step recitations in product claims.

8. Because these inventions are distinct for the reasons given above and the search required for Groups I-V is not required for any other Group, restriction for examination purposes as indicated is proper.

9. A telephone call was made to T. Dillahunty on 8-8-03 to request an oral election to the above restriction requirement, but did not result in an election being made

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

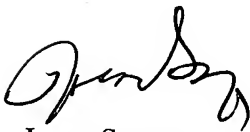
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10. It was noted in Applicant's Preliminary Amendment that the restriction requirement given in the parent Application 09/570,396 be withdrawn. However, Applicant failed to provide any reasons for why the restriction should be withdrawn. Furthermore, since no restriction had been made in the present Application of 10/044,895, there was no restriction to be withdrawn. Should Applicant traverse the restriction stated above, he should include his reasoning for why the restriction is improper.

11. Any inquiry to this communication or earlier communications from the Examiner should be directed to Jason Savage, whose telephone number is (703)305-0549. The Examiner can normally be reached Monday to Friday from 6:30 AM to 4:00 PM.

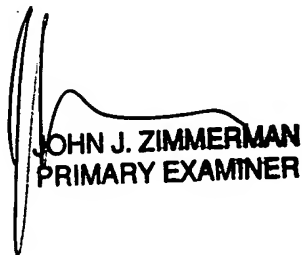
If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Deborah Jones, can be reached on (703)308-3822.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-2351.



Jason Savage

8-11-03



JOHN J. ZIMMERMAN  
PRIMARY EXAMINER